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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,948

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Hans-Dieter Dubs

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,948	Applicant(s) DUBS ET AL.	
	Examiner JAMES N. SMALLEY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/05; 8/08</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hadley US 3,910,443.

Examiner notes the claim is drawn to a capping system for a container with a mouth. In other words, the claim is only positively drawn to the closure. Therefore, the closure must only be capable of being used in the intended manner. In the instant case, because the closure of Hadley '443 meets all claimed structural features of the cap, it is inherently capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Hadley '443 teaches an aluminum cap comprising a bottom for covering the mouth, a jacket, a guarantee ring defined by a horizontal score (5), and a vertical score (4), and which is taught in column 3, line 10 to be formed of aluminum. Because the cap meets all claimed structural features, it will inherently perform as claimed, if applied onto a container neck such as that of the instant claims.

Furthermore regarding claim 8, Examiner contends the claim limits that a stopper "can be inserted into the mouth of the container." This is not held to be a positive recitation of such structure (which would comprise more definite language, such as "is inserted..."). Thus, Examiner asserts the prior art need not require a stopper in order to properly anticipate the claim.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kutcher US 3,601,273.

Examiner notes the claim is drawn to a capping system for a container with a mouth. In other words, the claim is only positively drawn to the closure. Therefore, the closure must only be capable of being used in the intended manner. In the instant case, because the closure of Hadley '443 meets all

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claimed structural features of the cap, it is inherently capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Kutcher '273 teaches an aluminum cap comprising a bottom (10) for covering the mouth, a jacket (11), a guarantee ring defined by a horizontal score (14), and a vertical score (18), and which is taught in column 1, lines 50-57 to be the same type of closure as that of US patent 3,303,955, which is taught in column 1, line 16 of the same document to be formed of aluminum. Because the cap meets all claimed structural features, it will inherently perform as claimed, if applied onto a container neck such as that of the instant claims.

Furthermore regarding claim 8, Examiner contends the claim limits that a stopper "can be inserted into the mouth of the container." This is not held to be a positive recitation of such structure (which would comprise more definite language, such as "is inserted..."). Thus, Examiner asserts the prior art need not require a stopper in order to properly anticipate the claim.

4. Claim 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Fabrice US 2,113,176.

Examiner notes the claim is drawn to a capping system for a container with a mouth. In other words, the claim is only positively drawn to the closure. Therefore, the closure must only be capable of being used in the intended manner. In the instant case, because the closure of Hadley '443 meets all claimed structural features of the cap, it is inherently capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the limitations of claim 5, 7, and 8 may not necessarily be found in Fabrice; however, the closure must only be capable of being used in the intended manner, i.e. with a container neck having such structures.

Fabrice '176 teaches a closure having an end cap (unlabeled), a jacket (5) extending from the end cap, a guarantee ring (6), a predetermined rupture line (along 7, 8), at least one cam (4), and at least

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one vertical cut (9). Regarding claim 9, the reference teaches the cap is first placed on the neck, and then pressed around the threads, and the guarantee ring is flanged such that it laterally overlaps the cams.

Furthermore regarding claim 8, Examiner contends the claim limits that a stopper "can be inserted into the mouth of the container." This is not held to be a positive recitation of such structure (which would comprise more definite language, such as "is inserted..."). Thus, Examiner asserts the prior art need not require a stopper in order to properly anticipate the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fabrice US 2,113,176, as applied above to claim 9, and further in view of Schumacher US 2003/0127420.

Fabrice '176, as applied above, teaches all limitations substantially as claimed, but fails to teach a stopper inserted in the container neck before applying the closure.

Schumacher '420, in the embodiment of figure 6, teaches applying a stopper (124) before applying a threaded closure. The stopper seals the container, and the threaded closure allows for continued opening and closing once the stopper has been removed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of applying the closure of Fabrice '176, providing a stopper in the container neck, before applying the closure, as taught by Schumacher '420, motivated by the benefit of applying an inner seal which is to be removed before a first use, allowing the closure to be reapplied after repeated uses.

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7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fabrice US 2,113,176, as applied above to claim 9, and further in view of Hicks US 807,381.

Fabrice '176, as applied above, teaches all limitations substantially as claimed, but fails to teach a stopper inserted in the container neck before applying the closure.

Hicks '381 teaches applying a cork stopper to a bottle neck, and then applying a closure, bonding the two elements together in order to allow for resealing of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of applying the closure of Fabrice '176, providing a cork stopper first into the container, and then applying the closure, as taught by Hicks '381, motivated by the benefit of fusing the two elements together and allowing for a resealing of the container with the cork.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James N Smalley/
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781